

# INTRODUCING WASHINGTON WATER ACQUISITION PROGRAM

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The Washington Water Acquisition program is a voluntary initiative offering monetary compensation to water-right holders willing to revert all or portion of their right back to the state to hold in trust. Water-right holders can participate by selling, leasing, or donating all or part of their right. The Water Acquisition Program is focused on increasing stream flows in basins experiencing chronic water shortages, referred to as the 16 critical basins. While each basin is unique and has a distinctive set of issues, a consistent approach to water rights acquisition ensures credible and effective program. Limited acquisition work has been performed to date. This work has often not been strategic and coordinated.

The water rights acquisition strategy provides a framework that brings together different approaches and guides future water rights acquisitions. A strategic and consistent approach will help ensure a greater likelihood that water acquisitions funded by public monies have the highest potential for long-term success. To achieve long-term success, the water rights acquisition strategy:

- **Provides a vision** describing the desired goals, and objectives needed to achieve those goals.
- **Identifies priorities** based on credible information.
- **Effectively and strategically guides** water rights acquisitions.
- **Documents clearly** how the water rights acquisition program “works” and **how to evaluate proposals**.
- **Promotes and endorses active partnerships** with local watershed groups, water-right holders and other interests.
- **Supports locally-established** water rights acquisition initiatives.
- **Provides a foundation for integrating and coordinating** projects and programs funded by state, federal, local and tribal governments and private organizations and for coordinating water rights acquisition with other stream flow restoration programs.
- **Establishes an accountability system** to ensure good investment decisions.

## I. Vision, goal and objectives

### **Vision:**

Sufficient water is available for productive fish populations.

### **Goal:**

Assist in achieving stream flow requirements for fish in all 16 critical basins.

### **Objectives:**

The strategic objectives of the Washington Water Acquisition Program are tailored to specific watersheds and consider the following:

- Status of instream flows and water rights in each watershed.
- Where, when and quantity of water needed to most effectively increase fish productivity.

- Opportunities for achieving instream flows via water rights acquisition and other means.
- Levels of community support and among interested parties.
- How to ensure public monies are used effectively and efficiently.

The following objectives are considered central to the success of the stream flow restoration program:

#### **Objective 1**

**Target stream flow efforts** to streams and reaches most biologically important for current and future fish production, especially where chronic low flows impede fish recovery.

#### **Objective 2**

**Acquire and protect** a sufficient amount of water to meet stream flows for fish populations within priority critical basins and to **optimize productivity** of salmon stock, where feasible and practical.

#### **Objective 3**

**Engage local watershed communities and gain public trust and acceptance** of the need to achieve instream flows for fish production through water rights acquisitions as well as other means to restore flows.

#### **Objective 4**

**Ensure the water rights acquisition program is applied fairly and impartially**; and the decision-making process is predictable, open and expedient.

#### **Objective 5**

**Ensure cost-effective and efficient use of state and federal investment** in water rights acquisitions.

## **II. Barriers, benefits and incentives for water rights acquisitions**

When pursuing water acquisitions for fish, it is vital to understand and recognize barriers and benefits for achieving instream flows. This means understanding the perspectives of water-right holders and local communities where acquisitions are likely to occur. To be successful, the strategy for water acquisition must:

- Result in fish habitat and fish populations improvements.
- Provide direct economic benefit to the water right holder. Even participants donating a water right may receive tax and charity benefits.
- Help avoid litigation under the Endangered Species Act.
- Avoid relinquishment of the water right through non-use.
- Promote broad community support and adequate incentives.
- Necessitate active partnerships to locate willing sellers, and dispel the fear and distrust of transferring water to instream flows.

### **III. Action strategies**

The action strategies are aimed at helping agency representatives and local partners engaged in stream flow restoration use water rights acquisition strategically and effectively. Each strategy has been developed and is described in-depth in the following seven chapters.

#### **Guiding principles**

The action strategies were shaped using the following principles:

- Water acquisitions are voluntary transactions based on the concept of “willing sellers, willing buyers.”
- Water acquisitions are part of the larger context of managing water to maximize uses and benefits, including consumptive and ecosystem water needs.
- Water acquisitions are based on state and local scientific knowledge and consider social and local economic conditions.
- Water acquisitions are accomplished through partnerships with local watershed and regional groups, and private organizations engaged in water and land acquisition.
- Water acquisitions include on-going, long-term monitoring and accountability efforts.

#### **Strategy 1: Selecting Right Tools for Acquiring Water Rights**

There are various mechanisms and tools for putting water back into streams (leasing, water banking, etc.). To select the right tool, Ecology and its partners will:

- Research existing efforts in other states and evaluating applicability to Washington.
- Develop a concept paper, soliciting input and developing proposals for implementation, including any needed legislative changes.
- Select key areas within the priority critical basins for implementation of “innovative mechanisms,” garnering local support and setting up appropriate mechanisms.
- Design or select tools in tandem with evaluating barriers and benefits of potential acquisitions within each targeted basin.

#### **Strategy 2: Prioritizing Where and When to Acquire Water Rights**

Watersheds, sub-watersheds, streams and stream reaches are identified and prioritized by the departments of Ecology and Fish and Wildlife. These priorities will be shared and possibly modified based on input from local watershed planning units, regional salmon recovery boards, tribes other local, state and federal agencies and private, non-profit organizations. Key steps of knowing where and when to acquire water rights include:

- Developing prioritization criteria.
- Gathering and analyzing information regarding relative condition of current stream flow problems and fish status, the number of diversions; amount of water needed to improve flow conditions; and opportunities for acquisitions.
- Selecting priority basins and streams within each basin.
- Producing maps for each priority basin, indicating potential acquisition areas.
- Sharing information with key stakeholders.

Lists and maps outlining the prioritized rivers and streams have been developed and are located in **Appendix II**. The first map is a “coarse” level analysis that identifies and prioritizes rivers

and streams. A more “refined” product will be produced later after consultation and coordination with key stakeholders.

### **Strategy 3: Establishing Partnerships and “Local Market Places”**

This strategy is aimed at generating interest and building public trust about the need to achieve instream flows through water rights acquisitions and assisting local communities and others establish their own “local market places” for acquisitions and find willing sellers. Key steps include:

- Developing partnerships with key stakeholders. Partners include local, tribal, state, federal and private interests.
- Implementing outreach strategies tailored for specific targeted watersheds.
- Actively seeking support of local communities and potential sellers.
- Supporting local community presence by sharing technical information and providing funding, whenever possible.
- Coordinating with other water rights acquisition activities in the basins.

### **Strategy 4: Evaluating Water Rights for Transfer to Trust Water**

Knowing the characteristics of potential water rights (its seniority, historic beneficial use, transferable quantity of water, etc.) can help ensure that acquired water rights are more than paper claims or rights. This evaluation must be performed prior to finalizing an acquisition. In addition, a preliminary evaluation is recommended prior to determining and negotiating value of the water right. The evaluation can be complex and varies with the type of transaction (short-term vs. long-term lease, etc.). Key steps include:

- Reviewing existing statutes and procedures and identifying issues and process for resolution.
- Developing clear, simple and streamlined technical and administrative guidance for Ecology staff and partner entities.
- Conducting preliminary and final evaluation of water rights for transferring into the trust water right program.
- Providing training on how the trust water right transfer program works.

### **Strategy 5: Determining and Negotiating Fair Market Value**

The rapid development of water markets in Washington and the need for accountability of the public’s investment demand assurance that citizens are getting the best “bang for the buck.” Determining and negotiating fair market value for water rights requires knowledge of what is being purchased (legal characteristics of the water right, etc.) as well as length of time, location and type of transaction being contemplated. Key steps include:

- Researching and adopting methodologies.
- Setting up guidance regarding what the state will and will not pay for.
- Developing qualifications and list of potential “appraisers.”
- Developing templates for water rights acquisition agreements, including conditions required of the water-right holder involved in the transaction.
- Communicating information developed.
- Tracking the effectiveness of the valuation methodology, basin-by-basin.

**Strategy 6: Ensuring Cost-Effective and Efficient Use of Investments**

State, federal, tribal, local and private organizations all have intensified their interest in water rights acquisitions. Funding has been approved by the U.S. Congress, Washington state legislature and federal agencies to acquire water rights through purchases, leases, conservation efficiencies and other means. In addition, private funds are available for water acquisition by private, non-profit organizations. To ensure efficient and effective use of public funds, there is a need to coordinate and cost-share acquisition activities, track expenditures and the water rights put into trust, exchange information, and seek long-term funding opportunities. Key steps include:

- Coordinating water rights acquisition funding activities with other funding sources dealing with instream flow restoration such as the Water Irrigation Efficiencies Program, federal Farm bill, BPA water brokerage funds, etc.
- Identifying future water rights acquisitions funding needs.
- Investigating and seeking cost sharing and other funding opportunities.
- Tracking and reporting water rights acquired by all funding sources.

**Strategy 7: Protecting Trust Water and Evaluating Success**

A monitoring program is needed to determine whether instream flows are being met, whether or not acquired water rights are being protected and actually putting in more water in targeted streams, and whether fish species are being helped. Key steps include:

- Implementing compliance and enforcement actions to protect trust water rights.
- Developing an effective monitoring program for each basin.
- Identifying baseline data and information needed and means to acquire the data such as installation of additional gauges, metering, and fish population measures.
- Designing and implementing a system to evaluate the benefit to fish.
- Designing and implementing a process for evaluating public acceptance of the program.
- Setting up a reporting system regarding program implementation and effectiveness.
- Coordinating with other related monitoring and compliance activities.